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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BRUCE BOTTORFF,  
*Complainant,*

v.

CITY OF CHARLESTOWN,  
*Respondent.*

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Formal Complaint No.  
18-FC-127

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Charlestown (“City”) violated the Open Door Law<sup>1</sup> (“ODL”). Attorney Michael Gillenwater filed an answer on behalf of the City. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 21, 2018.

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<sup>1</sup> Ind. Code §§ 5-14-1.5-1 to -8

## **BACKGROUND**

Bruce Bottorff (“Complainant”) filed a formal complaint alleging the City of Charlestown (“Council”) violated the Open Door Law (“ODL”) by providing defective public notice for a meeting held on or about Wednesday, September 12, 2018.

Bottorff alleges the City posted notice of a meeting advertising a start time of 9:00 a.m. when in actuality, it began at 5:30 p.m. He also contends the purpose of the meeting was not posted. Bottorff included a photograph of the notice with his complaint.

In its response, the City does not dispute the fact the original notice gave a time of 9:00 a.m. Nor does it dispute that it held the meeting at 5:30 p.m. The City, however, contends that it replaced the defective notice with a proper notice albeit within the 48-hour time frame. While some may have been admittedly misled by the original notice, it does not appear to have been intentional and no members of the public or media showed up at 9:00 a.m. to observe a meeting. On the contrary, a large contingent of press and interested members of the public did attend the 5:30 meeting. No public business was conducted at 9:00 a.m., nor was a majority of any governing body present.

When the City Common Council was advised of the unintentional error, it took steps to remediate the issue. The staffer who posted the defective notice was retrained and the Council’s response clearly demonstrates an understanding of the importance of good notice.

## ANALYSIS

The issues in this case are whether the public notice of the September 12, 2018 meeting was defective and whether the City's remedial measures were appropriate.

### 1. The Open Door Law

It is the intent of the Open Door Law (“ODL”) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. Ind. Code § 5-14-1.5-3(a). The City of Charlestown Common Council is a governing body of a public agency; and thus, subject to ODL. *See* Ind. Code § 5-14-1.5-2(b). So, unless an exception applies, all meetings of the Council must be open at all times to allow members of the public to observe and record.

#### 1.1 Public Notice of Meetings

Bottorff argues that the Council is in violation of the Open Door Law because the meeting notice was deficient and did not state the purpose of the meeting.

Indiana Code Section 5-14-1.5-5(a) requires the governing body of a public agency to give “[p]ublic notice of the date, time, and place of any meetings, executive sessions, or of any reconvened meeting...”

As for purpose of a meeting, one does not have to be given by a City Council. While an agenda, if one is used, must be made available contemporaneous with the meeting, it does not have to be included with the notice itself.

Turning now to the matter of the notice time, it is abundantly clear from the City's response that the typographical error was unintentional and corrected immediately upon discovery. As noted in its response, the amended notice was not technically legally adequate, but remedial measures were taken to avoid any discrepancies in the future.

Forty-eight hours' notice is an essential element of government transparency. This Office does not take that lightly. It appears also, however, that neither does the City. Its thoughtful response owns up to the deficiency and gives assurances it will not happen again.

This Office employs a similar analysis as the judiciary when determining the harm done pursuant to a violation of the Open Door Law: What extent did the mistake prejudice the public's right to know? In the current instance, given the ultimate attendance at the meeting and the low-impact subject matter discussed, it does not appear as if the public interest was harmed.

This is one of those rare occasions when a violation or non-compliance would have contributed to better practice and understanding of the Open Door Law even without the intervention of this Office. Often public agencies will double-down on their mistakes and try to justify them. This is not one of those instances.

Therefore I consider the remedial measures to be satisfactory and commend the City for taking responsibility for its actions and correcting course.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt  
Public Access Counselor